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Department of Justice

# Iowa Attorney General

Attorney General Tom Miller

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## **DeCoster to be Classified as First "Habitual Violator"**

DeCoster also will pay a \$150,000 civil penalty and construct six concrete manure storage structures to improve manure handling. Habitual violator status enhances penalties from \$5,000 to \$25,000 per day per violation and prohibits any new construction of confinement feeding operations.

**DES MOINES** - Attorney General Tom Miller said today that Austin J. "Jack" DeCoster will be classified as a "habitual violator" and will pay a civil penalty of \$150,000 within ten days for violation of Iowa environmental laws.

DeCoster does business as DeCoster Farms of Iowa and raises hundreds of thousands of pigs each year in large confinement feeding operations.

Under Iowa law, "habitual violators" face enhanced penalties up to \$25,000 per day per violation (compared to the normal \$5,000 per day per violation) and they are prohibited from any new construction of confinement feeding operations. DeCoster is the first to be classified a habitual violator in Iowa.

Miller said DeCoster also will construct concrete manure storage structures at six sites to improve manure storage capacity, improve manure handling ability, and reduce the need for transporting manure on county roadways. "This should help reduce the likelihood of manure spills harming our waterways," Miller said. The formal habitual violator classification by the Dept. of Natural Resources will be issued after DeCoster commences construction of the concrete storage structures, since new construction is prohibited under habitual violator status. DeCoster is expected to begin the construction immediately. The Dept. of Natural Resources then is expected to issue the habitual violator classification within about two weeks.

Miller's Office has filed a total of five lawsuits alleging environmental violations by DeCoster Farms, the most recent filed in Lucas County on April 24. Last July, the Iowa Supreme Court affirmed a Wright County court decision assessing a civil penalty against DeCoster in the first suit, constituting one "strike" toward habitual violator status. On March 22 the Supreme Court upheld a district court decision against DeCoster in the second and third suits concerning violations in Wright and Hamilton Counties. The Supreme Court action paved the way for classification of DeCoster as a habitual violator under Iowa law, which requires that violators must have been the subject of "three strikes" - three violations referred to the Attorney General for legal action and assessed a civil penalty by a court. Civil penalties ordered in the first three suits totaled \$79,000.

Gov. Tom Vilsack, who followed the matter and was briefed by Miller, said the resolution was good for the environment and vindicated Iowa law.

DeCoster entered into a "Joint Stipulation and Agreement" with Miller's Office today to resolve pending enforcement actions and protect the environment. In a consent judgment filed today in Lucas County District Court, District Court Judge R.H. Blink approved the agreement and ordered DeCoster to pay the \$150,000 in civil penalties. The agreement contains the following elements:

‣ DeCoster will be classified a habitual violator by the DNR, with numerous consequences including enhancing penalties from \$5,000 to up to \$25,000 per day per violation and prohibiting any construction or expansion of animal feeding operation structures.

‣ DeCoster will pay civil penalties totaling \$150,000 within ten days in settlement of the Attorney General's fourth and fifth lawsuits. The fourth suit was tried in Wright County in March 1999 with the court assessing a civil penalty of \$25,000; that decision was on appeal by DeCoster to the Supreme Court. DeCoster will withdraw the appeal and four other administrative appeals that were pending. DeCoster will pay \$125,000 in settlement of the fifth suit Miller filed in April in Lucas County - the highest penalty paid by DeCoster for a violation. Miller said he is very pleased with the \$150,000 total civil penalty to be paid by DeCoster. The money will be deposited in the State's Manure Indemnity Fund.

‣ DeCoster will start construction immediately of six formed concrete manure storage structures to improve manure storage capacity. Miller said the structures would ease the pressure to land-apply manure from underground pits that are filling up - a situation Miller said appeared to lead to some of the earlier violations, when manure was land-applied to frozen or saturated ground and ran off into waterways. The structures also should reduce "wear and tear" on county roads caused by manure transport. (Even though the structures fall below the size requiring DNR permits, DeCoster must construct them pursuant to DNR rules and specifications applicable to permitted facilities.)

‣ DeCoster will be subject immediately to the enhanced penalties of "habitual violator" status, by agreement of the parties, even though the DNR's formal classification notice will be delayed briefly while DeCoster begins construction of the concrete storage structures. DeCoster is subject to payments up to \$25,000 per day if a violation should occur before the formal habitual violator classification is issued in about two weeks; he also is prohibited from any construction other than the concrete manure storage structures.

Miller said he is pleased with the resolution of the DeCoster matters. "We have upheld Iowa's environmental laws, and DeCoster will have to live with the constraints of habitual violator status," Miller said. "We have won a very substantial civil penalty, and we will see construction of six manure storage facilities that should help protect our waters."

#### DeCoster Farms Enforcement History

[http://www.iowa.gov/government/ag/consumer/press\\_releases/Decoster-settlement-release-6-15-00.html](http://www.iowa.gov/government/ag/consumer/press_releases/Decoster-settlement-release-6-15-00.html)